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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 UNITED STATES OF AMERICA,

Case No. 2:13-CR-423 JCM (GWF)

8 Plaintiff(s),

ORDER

9 v.

10 DANIEL JAMES BARNES,

11 Defendant(s).
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13 Presently before the court is defendant Daniel Barnes' emergency motion to reconsider the
14 magistrate judge's denial of defense counsel's motion to withdraw as counsel. (Doc. # 236). The
15 United States has not filed a response.

16 Also before the court is defendant's motion to continue the trial in this matter. (Doc. # 238).
17 The government has not filed a response.

18 Mr. Gaffney, defendant Barnes' counsel, objects to the magistrate judge's order denying
19 his motion to withdraw. In the motion (doc. # 229), Gaffney argues that he should be allowed to
20 withdraw from his representation from Mr. Barnes based on defendant's physical threats towards
21 him.¹ Gaffney contends that given Mr. Barnes' threats, and his apprehension of physical attack
22 during trial, he will not be able to effectively represent Barnes because of his animosity towards
23 Barnes and his concerns for his own safety. Defendant Barnes filed a response to Gaffney's motion
and does not oppose Mr. Gaffney's withdrawal. (Doc. # 235).

24 Having heard these arguments and considering the procedural history of this case,
25 including Mr. Barnes' similar problems with previous counsel, the magistrate judge denied
26 counsel's motion to withdraw. Mr. Gaffney has ordered an expedited transcript of the hearing
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28 ¹ On recorded prison telephone calls, Barnes has represented to a third party that he wishes
to "knock out" or "lay hands on" Mr. Gaffney.

1 before the magistrate judge. Defendant moves for a thirty-day continuance so that the court can
2 review the *ex parte* representations that Gaffney made to the magistrate court before ruling on the
3 motion to reconsider that court's denial of his motion.

4 Magistrate judges are authorized to resolve pretrial matters subject to district court review
5 under a "clearly erroneous or contrary to law" standard. 28 U.S.C. § 636(b)(1)(A); LR 3-1(a) "A
6 district judge may reconsider any pretrial matter referred to a magistrate judge in a civil or criminal
7 case pursuant to LR IB 1-3, where it has been shown that the magistrate judge's ruling is clearly
8 erroneous or contrary to law." LR 3-1(a).

9 "A finding is clearly erroneous when although there is evidence to support it, the reviewing
10 body on the entire evidence is left with the definite and firm conviction that a mistake has been
11 committed." *United States v. Ressam*, 593 F.3d 1095, 1118 (9th Cir. 2010) (citations omitted). "An
12 order is contrary to law when it fails to apply or misapplies relevant statutes, case law or rules of
13 procedure." *Global Advanced Metals USA, Inc. v. Kemet Blue Powder Corp.*, 2012 WL 3884939,
14 at *3 (D.Nev.2012).

15 First, the court finds that the continuance is not necessary. The court has reviewed the audio
16 recording of the hearing in front of the magistrate judge. It does not therefore require a transcript
17 of the hearing to decide the motion to reconsider—the record before the court is complete. This
18 matter has been continued seven times prior to this order, and the court will not further delay
19 proceedings based on counsel's emergency motion.

20 Second, the magistrate judge's denial of counsel's motion to withdraw was not clearly
21 erroneous or contrary to the law. A trial court's decision whether to release counsel is an exercise
22 of its discretion. *United States v. Williams*, 717 F.2d 473, 475 (9th Cir. 1983) (citing *Glavin v.*
23 *United States*, 396 F.2d 725, 726 (9th Cir. 1968). Here, Judge Foley, while acknowledging Mr.
24 Gaffney's concerns for his safety, found that those concerns could be addressed by this court
25 during the trial.

26 Citing Mr. Barnes' similar history with both of his prior attorneys, the magistrate judge
27 found that granting the motion to withdraw would not solve the problems put forth by Gaffney
28 because Mr. Barnes would have the same problems with future counsel,² whose effectiveness
would be similarly handicapped.

² Mr. Gaffney's concerns about his effectiveness are submitted in detail on the record. (*See*
doc. # 236 at 3-4).

1 The court finds that Judge Foley's exercise of the court's discretion was proper. The court
2 is not "left with [a] definite [or] firm conviction that a mistake [was] committed. *See Ressam*, 593
3 F.3d at 1118. Judge Foley's denial of the motion was not contrary to the law. *See Global Advanced*
4 *Metals*, 2012 WL 3884938 at 3. The motion to withdraw is therefore denied.

5 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Daniel
6 Barnes' emergency motion to reconsider the magistrate judge's denial of defense counsel's motion
7 to withdraw as counsel (doc. # 236) be, and the same hereby is, DENIED.

8 IT IS FURTHER ORDERED that defendant's motion to continue the trial in this matter
9 (doc. # 238) be, and the same hereby is, DENIED.

10 DATED March 30, 2016.

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13 UNITED STATES DISTRICT JUDGE
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